P & Designs
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Legal Deptt

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Subject:— Opinion under the Indian Patents and Designs Act 1911

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File No. O.P. & Designs/49

Gen. 194

C O N T E N T S.

Legal Department File No. O. Patents & Designs 249.

Sr. No.	R. I. / O. No.	Subject	Pages.
		Indian Patents and Designs Act, 1911.	
1.	R.I.No.769 17.1.49. O.No. 1055 28.1.49.	Whether the patent difficulty can be got over by distributing the paludrine tablets. free of charge ----	1-4
	R.I.No.14421/49 O.No. 11608 18.10.49.	Sec. 63(1) with sec. 80(1) and 18---- whether the opinion of the Jt. Registrar that no other party need be prevented from manufacturing were not making machines and selling them to public is correct.	5-8

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Sc.

Office of the R.L.A.

It appears that the Imperial Chemical Industries holds a patent in respect of the manufacture of paludrine. The Director of Haffkine Institute has informed the Director of Public Health that he would supply the latter paludrine tablets at a cost of Rs.34 per 1,000 -- a rate which is considerably lower than that quoted by the I.C.I. The Director of Public Health proposes to purchase the supply from the Haffkine Institute. He, however, proposes that, to get over the patent difficulty, the tablets to be obtained from the Haffkine Institute should be a distributing ed free in rural areas. The Health and Local Government Department considers that it is doubtful whether the patent difficulty can be got over by distributing the tablets free of charge. The Remembrancer of Legal Affairs is requested to advise.

Under Sub-section (1) of section 51 of the Indian Patents and Designs Act, 1911, subject to the other provisions of this section, a patent shall have to all intents the like effect as against His Majesty the King as it has against a subject. But under-section (2) it is possible for Government to arrange, after giving notice to the patentee, to manufacture paludrine tablets on such terms as may be agreed on with the approval of the Central Government between this Government and the patentee provided the tablets are required for the services of the Crown and, in the event of any dispute as to the terms thereof, the matter can be referred to the High Court for decision under sub-section (4). It is doubtful whether services of the Crown would include services of the public as in the present case, for services of the Crown would ordinarily mean services such as Military service, Naval service etc. Assuming that services of the Crown would include services of the public, the Court, in settling the terms under

sub-section (4) may take into consideration the fact that the paludrine tablets manufactured by the Haffkine Institute are proposed to be distributed free and Government does not intend to make any profit thereby; but the use of paludrine tablets even without any pecuniary advantage would involve an infringment of the patent (see United Telephone Co. v. Sharples, 1885, 2 R.P. 88). Consequently the fact that Government proposes to distribute paludrine tablets free would not enable Government to get over the patent difficulty.

Sd/- P.M.Lad

27-1

Remembrancer of Legal Affairs.

U.R. to H.&.L.G.D. No. 1055 , dated the 28th January 1949.

V.M.D./5-6
4c.

Submitted.

This case is regarding the assignment of two patents (1) Wire net making machine (2) damp proof hot patches compound by Mr. Bohus in favour of Government. These patents have not been renewed by Mr. Bohus and Government is required to spend Rs. 700/- on account of arrears and restoration of patent fees. The Jt. Registrar, Industrial Cooperatige and village Industries, Poona states that the wire net making machine is useful and the patent may bes got transferred to Govt. by paying restoration and renewal fees.

The Jt. Registrar further observes that the idea of Govt. in getting the patent of wire net making machine transferred to it was not for profit making but it was that the machines should be manufactured and introduced in villages. This being the fact and also that Mr. Bohus has already executed an agreement assisigning the patents no other party need be prevented from manufacturing the machines and selling them to public. The R.D. does not agree with this presumption of the Jt. Registrar. R.L.A. is therefore, requested to advise, whether the above opinion of the Jt. Registrar is correct.

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Patents and Designs Act, 1911 Section 63(1) with section 20(1). and sec.16.

Before the presumption made by the Joint Registrar at page 36 ante can become operative, it would be necessary that the arrears of fees should be paid by or on behalf of Mr. Bhhus, and the patent restored to his name under section 16 of the Indian Patents and Designs Act; and then Government should by virtue of the assignment have its name registered in the Register of Patents as proprietor of the patent under section 63(1) read with section 20(1).

Sd/- P.M.Lad
17-10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11602, dated the 18th October 1949.

V.M.D./5-6
4c.